Supreme Court, U.S.
FILED

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No. ____

In The

# Supreme Court of the United States

October Term, 1997

ELIZABETH KLIMAS

*Petitioner,*

v.

K. KARAGOZIAN, an individual; DOES 1 to 20; UNITED STATES DEPARTMENT OF TREASURY; INTERNAL REVENUE SERVICE, Van Nuys District; INTERNAL REVENUE SERVICE, Fresno District INTERNAL REVENUE SERVICE, Laguna Niguel District; and ROXANNE KOBALKA, an individual,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## PETITION FOR WRIT OF CERTIORARI

ELIZABETH KLIMAS
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19 pp

## RULE 14.1(a)

## THE QUESTIONS PRESENTED FOR REVIEW

I. Whether state tribunal can validly enjoin a person from prosecuting an action in personam in a District Court or Appellate Court of the United States in action that involves Federal Questions under the Fourteenth and Fifth Amendments of the Constitution and constitutional Doctrine of Due Process Clause.

II. Whether defense of *res judicatae* compels *by the state,* has merit within the meaning of the Double Jeopardy Clause of the Fifth Amendment.

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## JURISDICTION OF THE UNITED STATES SUPREME COURT

Appellant Petitions the Ninth Court of Appeal's dismissal ***de novo*** in favor of the defendants, in her action alleging ***quid pro quo*** sexual harassment in violation of ***Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000(e)-5000(e)17,*** and in violation of the ***Fifth and Fourteenth Amendments of the Constitution.*** On April 25, 1997, in Memorandum No. 96-56447 D.C. No. CV-95-04464-RAP, Circuit Judges: Browning, Thompson and Hawkins, dismissed a Federal Question of law that has not been, but should be, settled now by the Supreme Court, Title 28 U.S.C. Section 1346 regulate the original jurisdiction over United States as defendant. Also, the Supreme Court has developed a mechanism regulating cases in a ***Title VII of the Civil Rights Act of 1964, 42 U.S.C. trial. Arnold v. United States, 816 F.2d 1306 (9th Cir. 1987) and Otto v. Heckler, 781 F.2d 754 (9th Cir.) Amended by 802 F.2d 337 (9th Cir. 1986), Arnold, 816 F.2d at 1311.*** Furthermore, ***Title VII*** is not the exclusive remedy for federal employees who suffer "highly personal" wrongs, such as defamation, harassing phone calls, and physical abuse. Remedy for unconstitutional actions other than employment discrimination, even if arising from the same core of facts, is not ***barred*** by Title VII; ***Otto, 781 F.2d at 756-57 ("[H]ighly personal violation[s] beyond the meaning of discrimination [are] separately actionable.") (quoting Stewart v. Thomas, 538 F.Supp.891, 895 (D.D.C. 1982)).***

Ninth Circuit previously held in ***Bennett v. United States, 803 F.2d 1502, 1504 (9th Cir. 1986)*** that Government is not immunized from liability for negligently hiring and

supervising an employee. ***Id. at 1503.*** See ***42 U.S.C. 1981(a), Civil Service Reform Act, Pub. L. 95-454,*** see ***Washington v. Garrett, 10 F.3d 1421, 1435 (9th Cir. 1993), Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57, 65 (1986).*** Furthermore, in ***Bennett v. United States, 803 F.Refusal 2d 1502, 1504 (9th Cir. 1986)*** Court implicitly rejected the distinction raised by Justice Kennedy's concurrence, finding that it would be ***irrational*** to allow Government for negligent supervision of employees, but deny it immunity for negligent supervision of nonemployees.

## STATEMENT OF THE CASE

Plaintiff was employed by the IRS as Tax Examiner effective June 17, 1990. Beginning in September of 1990 when Roxanne Kobalka became plaintiff's Manager, she starts sexually propositioning plaintiff. During a several months period Roxanne Kobalka subjected plaintiff to unwelcome sexual advances, sexual verbal abuse, committed sexual battery, invaded plaintiff at home where she forcibly attempted to have sexual intercourse with plaintiff, later attempted to kidnap plaintiff in Kobalka's car and forced plaintiff out of her own bed, where defendant slept over night against plaintiff's will, forcing plaintiff to sleep on a living room floor.

Furthermore, defendant made her sexual demands a part and condition of plaintiff's employment. Moreover, this situation created abusive and hostile working environment inside the Agency engaged in nepotism practices. There were several close relatives from Kolbalka's family working together in the same Offices. Kobalka's

advances triggered a chain reaction of retaliation that took all kinds of forms. On December 7, 1990, plaintiff filed a formal complaint of sexual harassment with EEOC, under Title VII Civil Rights Act and Title 5 U.S.C. Sec. 2302.

Refusal by plaintiff to the sexual conduct and further formal complaint against Lesbian-Kobalka, triggered a long lasting chain reaction of a threatening decision affecting plaintiff's employment, and eventually leading to intimidation and threats. Under the threat of being fired from the job and duress, plaintiff was forced to "drop" the formal sexual harassment charges under the pretextual "agreement." On May 3, 1991, plaintiff experienced "wrongful termination" from her job.

See ***Fisher v. San Pedro Penninsula Hospital (1989), 214 Cal.App. 3d 590, 608, 262 Cal. Rptr. 842 (FEHA); see also E.E.O.C. v. Hacienda Hotel (9th Cir. 1989), 881 F.2d 1504, 1514-1515 (Title VII).***

Because of plaintiff's administrative and legal actions taken over the four-year period, see ***Klimas v. Department of Treasury, No. 92-70264 (9th Cir. Feb. 11, 1994)***, charging employment discrimination based on national origin and disparate treatment, IRS Agency unable to stop it, retaliated in another form. In 1995, the IRS Agency filed claim alleging delinquent taxes on plaintiff's account for the years before plaintiff's employment with the IRS. See ***Personnel Administrator of Massachusetts v. Feeney (1979).*** On July 5, 1995, plaintiff filed suit in the United States District Court, seeking relief under the I.R.C. Secs. 7207, 7214, 7431 and 7206, filed concurrently with complaint for sexual harassment under Title 5 U.S.C.

Sec. 2302. IRS Agency or any other Governmental body did not respond to the suit. Ordered by Judge Richard A. Paez, plaintiff repeated civil service process on defendants. This time counsel for defendants filed motion to dismiss the suit for lack of jurisdiction. Upon Judge Richard A. Paez' order, amendment complaint was allowed against Kobalka under sexual harassment charges but not the claim against IRS for taxes.

First Amendment Complaint under the F.R.C.P. Rule 15(a) was filed on March 11, 1996, and civil service performed properly. Counsel for defendants responded again with Motion to Dismiss. During the period when plaintiff was out of town on temporary leave, counsel for defendants managed to set the Motion for hearing on June 17, 1996. Plaintiff alleges that she was not properly served with Notice of Hearing and counsel for defendants is not in possession of a proof of service.

On July 12, 1996, soon after, plaintiff filed "a late" opposition to the Motion to Dismiss and scheduled a Hearing for August 12, 1996. Plaintiff's Motion was ***DENIED***. Plaintiff has been ***DENIED*** to have her case for ***HEARING*** all together. Thus, plaintiff has been ***DENIED*** her Rights To Equal Protection Under The Law-Constitution. Furthermore, plaintiff has been ***DENIED JUSTICE***. United States court of appeals has decided an important question of federal law that has not been, but should be settled not barred. According to the defense, by doing so the court would ***DOUBLE JEOPARDIZE*** its previously disposed case, see ***Klimas v. Department of Treasury***. See ***Jones v. Clinton-F-3d-(8th Cir. 1996)***. In ***Jones v. Clinton***, The Court holds that "The very essence of civil liberty certainly consists in the right of every individual to claim

the protection of the laws, whenever "he" receives an injury." ***Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803)***, thus plaintiff is constitutionally entitled to access to the court and to the equal protection of the laws.

Moreover recently, and explicitly, access to the court has been held to be a "fundamental constitutional right" founded in the Due Process and Equal Protection clauses. See ***Bounds v. Smith, 430 U.S. 817, 828 (1977).*** This right is pivotal to our system of governance in that "civil right action [such as the 42 U.S.C. Section(s) 1983 actions at issue here] are of fundamental importance . . . in our constitutional scheme because they directly protect our most valued rights." Id. at 827 (quoting ***Johnson v. Avery,*** 393 U.S. 483, 485 (1969)).

Furthermore, court held that "the violation of civil rights through the abuse of state government positions of power has been of such great public concern that Congress felt it necessary to enact section 1983 to protect the citizenry and to hold persons with position of power accountable for its abuse. Thus, this is not a minor civil dispute to which one can assign no public interest." See ***Jones v. Clinton, 869 F. Supp. 690, 699 at 697 E.D. Ark. 1994, 95-1853, 72 F.2d 1354.*** See also ***People ex rel. Hurley v. Roosevelt, 71 N.E. 1137 (N.Y. 1904); DeVault v. Truman, 194 S.W.2d 29 Mo.1946).*** From the adage that justice delayed is justice denied, plaintiff faces the possibility of having United States Government in its Agency (hereafter "U.S. Department of Treasury-Internal Revenue Service") eluding his permanent and fundamental duty as a debtor to justice.

The Fourteenth Amendment of the Constitution of the United States with its Equal Protection Clause and the Bill of Rights illustrate strongly in Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection, Harvard Law Review 86 (1972): 1-48, Kenneth W. Simons, "Overinclusion and Underinclusion: A New Model," UCLA Law Review 36 (1989): 447-528. See ***Black,*** arguing against the federal government's violation of civil rights in ***Ex parte* Milligan (1866) and Ex parte *McCardle (1869).*** According to Chief Justice Warren Burger quoting ***Royster Guano v. Virginia (1920) "all persons similarly circumstance shall be treated alike."***

It has always been one of the basic principles of equity that an equitable remedy may be used to prevent irreparable injury. Therefore, petitioner is free to litigate fully her constitutional rights and claim in the United States Court and The Supreme Court of the United States. The federal government in its action by barring plaintiff from prosecuting her case under the Equal Rights under the Law is violating plaintiff's Fourteenth and Fifth Amendments' Constitutional Rights.

## CONCLUSION

For the foregoing reason, and because the rights protected in Title 42 sec. 1981, are protected against impairment by discrimination, the right of the Highest Court of the Land should be preserved in the reasons relied on for allowance of the writ.

Respectfully submitted,

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October 10, 1997

**APPENDIX A**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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NO. 96-56447
CT/AG#: CV-95-04464-
RAP(CTx)

ELIZABETH KLIMAS

Plaintiff-Appellant

v.

K. KARAGOZIAN; UNITED STATES
INTERNAL REVENUE SERVICE;
ROXANE KOBALKA; UNITED STATES
DEPARTMENT OF THE TREASURY

Defendants-Appellees

(Filed June 25, 1997)

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APPEAL FROM the United States District Court for the Central District of California, Los Angeles.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is affirmed.

Filed and entered April 25, 1997

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**APPENDIX B**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| ELIZABETH KLIMAS,<br>Plaintiff-Appellant,<br>v.<br>K. KARAGOZIAN; UNITED STATES INTERNAL REVENUE SERVICE; ROXANE KOBALKA; UNITED STATES DEPARTMENT OF THE TREASURY,<br>Defendants-Appellees. | No. 96-56447<br>D.C. No. CV-95-04464-RAP<br>**MEMORANDUM*** |

Appeal from the United States District Court
for the Central District of California
Richard A. Paez, District Judge, Presiding

(Filed Apr. 25, 1997)

Submitted April 21, 1997**

Before: BROWNING, THOMPSON, and HAWKINS, Circuit Judges.

Elizabeth Klimas appeals pro se the district court's dismissal of her Title VII employment discrimination

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a); 9th Cir. R. 34-4.

action against the IRS for lack of subject matter jurisdiction due to Klimas's failure to exhaust her administrative remedies. We have jurisdiction pursuant to 28 U.S.C. § 1291, and review the dismissal de novo. *See Bak v. United States Postal Serv.*, 52 F.3d 241, 243 (9th Cir. 1995). We affirm.

Klimas's amended complaint alleged that she was sexually harassed by a supervisor at the IRS, and that when she reported this harassment, she was terminated.[1] However, she failed to exhaust her Equal Employment Opportunity Commission (EEOC) administrative remedies prior to filing her action. Accordingly, the district court properly dismissed her action. *See EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 899 (9th Cir. 1994) (stating that a Title VII plaintiff must exhaust EEOC remedies before seeking federal adjudication of claims); 42 U.S.C. § 2000e-16(c).[2]

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[1] In her original complaint, Klimas also alleged that the Department of Treasury, various employees of the IRS, and Does 1-20 engaged in "negligent, careless, malicious and willfully oppressive" misconduct with respect to a tax levy placed on Klimas's bank account. This complaint was dismissed with leave to file an amended complaint limited solely to the sexual harassment claim. Klimas appeals only the dismissal of the claims asserted in her amended complaint. *See Dilley v. Gunn*, 64 F.3d 1365, 1367-68 (9th Cir. 1995) (stating that issues not raised in an opening brief are abandoned).

[2] Klimas also brought claims under 5 U.S.C. § 2302(b) and 18 U.S.C. § 245. Klimas does not appear to appeal the dismissal of these claims. *See Dilley*, 64 F.3d at 1367-68 (stating that issues not raised in an opening brief are deemed abandoned). In any event, nothing in 5 U.S.C. § 2302(b) confers jurisdiction upon a federal district court to review an alleged prohibited personnel action, and 18 U.S.C. § 245(b)(1)(C) is a criminal statute.

Klimas does not dispute that she failed to exhaust her administrative remedies prior to filing her action. Instead, her sole contention on appeal appears to be that she never received notice of the hearing date on defendants' motion to dismiss. We disagree. The defendants' notice of motion and motion to dismiss, with attached proof of service, advised Klimas of the hearing date.

**AFFIRMED.**

**APPENDIX C**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

| | |
|---|---|
| ELIZABETH KLIMAS, Plaintiff, v. ROXANE KOBALKA, et al., Defendants. | ) CASE NO. CV 95-4464 RAP (CTx) ) ORDER (Filed Aug. 15, 1996) |

Defendants' Motion to Dismiss came on for hearing on June 17, 1996. At that hearing, plaintiff did not file a timely opposition, nor did she appear. Subsequently, the Court granted defendants' Motion and dismissed the complaint without leave to amend. On July 12, 1996, plaintiff filed a late opposition to the Motion to Dismiss and scheduled a hearing for August 12, 1996. Plaintiff asserted that defendants never gave her notice of the June 17, 1996 hearing.

Plaintiff's late opposition is deemed a Motion for Reconsideration of this Court's decision to grant defendants' Motion to Dismiss. Treating it as such, it is DENIED.

IT IS SO ORDERED.

DATED: August 14, 1996

/s/ Richard A. Paez
Hon. Richard A. Paez
United States District Judge

## APPENDIX D

TERMED APPEAL

U.S. District Court
Central District of California (Western Div.)

CIVIL DOCKET FOR CASE #: 95-CV-4464

Elizabeth Klimas v. K Karagozian, et al Filed: 07/06/95
Assigned to: Judge Richard A. Paez
Referred to: Discovery Carolyn Turchin

Demand: $1,000,000
Lead Docket: None
Dkt# in other court: None

Nature of Suit: 870
Jurisdiction: US Defendant

Cause: 26:7426 IRS: Wrongful Levy for Taxes

| | |
|---|---|
| ELIZABETH KLIMAS<br>plaintiff | Elizabeth Klimas<br>[COR LD NTC] [PRO SE]<br>IN PRO PER<br>P O Box 56944<br>Sherman Oaks, CA 91413<br>818-752-7319 |
| v. | |
| K KARAGOZIAN, an individual<br>defendant | Edward M Robbins, Jr<br>[COR LD NTC]<br>Richard G Stack<br>[COR LD NTC]<br>AUSA Office of US Attorney<br>Civil Div – Federal Bldg<br>300 N Los Angeles St<br>Los Angeles, CA 90012<br>213-894-2879 |
| DOES, 1 to 20<br>defendant | |

| | |
|---|---|
| UNITED STATES DEPARTMENT OF THE TREASURY<br>defendant | Edward M Robbins, Jr<br>(See above)<br>[COR LD NTC]<br>Richard G Stack<br>(See above)<br>[COR LD NTC] |
| INTERNAL REVENUE SERVICE,<br>Van Nuys District<br>defendant | |
| INTERNAL REVENUE SERVICE,<br>Fresno District<br>defendant | |
| INTERNAL REVENUE SERVICE,<br>Laguna niguel District<br>defendant | |
| ROXANE KOBALKA, an individual<br>defendant | Leon W Weidman<br>[COR LD NTC]<br>Thomas K Buck<br>[COR LD NTC]<br>AUSA Office of US Attorney<br>Civil Div – Federal Bldg<br>300 N Los Angeles St<br>Los Angeles, CA 90012<br>213-894-2879 |